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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

SRC 07 800 22598

Office: TEXAS SERVICE CENTER Date:

JAN 26 2010

IN RE:

Petitioner:

Beneficiary:


PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

This petition, filed on July 25, 2007, seeks to classify the petitioner pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time she filed the petition, the petitioner was a postdoctoral researcher at the Center for Pharmaceutical Biotechnology at the University of Illinois at Chicago (UIC). The petitioner is now a staff scientist with Agave BioSystems in Ithaca, New York. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel argues that the evidence submitted by the petitioner “has established that her past achievements are greater than those of her peers” and that “she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.”

Section 203(b) of the Act states in pertinent part that:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability.--

(A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner received her Ph.D. in Biophysics from Ohio State University (OSU) in December 2006. The director found that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of the phrase, “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep’t of Transp., 22 I&N Dec. 215, 216 (Comm. 1998) [hereinafter “*NYSDOT*”], has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

We concur with the director’s finding that the petitioner works in an area of intrinsic merit, biomedical science, and that the proposed benefits of her work would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must

rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." *Id.* at 221. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.*

At issue is whether this petitioner's contributions in the field are of such unusual significance that she merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra element of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

Along with her published articles, educational qualifications, and other documentation pertaining to her activities and accomplishments, the petitioner submitted several letters of support.

[REDACTED] of Medicinal Chemistry and Director of the Center for Pharmaceutical Biotechnology, UIC, states:

I first met [the petitioner] in March of 2007 when she interviewed for a research position in my lab at UIC. I am glad to report that she has met and exceeded all my expectations for that position since joining the lab in April.

* * *

One focus of our group's research is a project led by [the petitioner] in working to block the synthesis of nucleotides in various bacteria, thereby inhibiting their replication in the host. We identified several key bacterial enzymes with major roles in these pathways. A major component of our strategy is to study the molecular structure of these enzymes using X-Ray crystallography with the aim of designing chemical inhibitors for the enzymes. Such inhibitors, after careful laboratory and clinical testing, can be developed into drugs combating bacterial infections. [The petitioner] will be at the forefront of this structure based approach, relying on her in-depth experience in protein biochemistry and spectroscopy.

* * *

[The petitioner] is currently playing a key role in my laboratory, and I expect that in the near future she will be one of the leading participants in our research. . . . [The petitioner's] research expertise makes her uniquely qualified for advanced biomolecular research.

As discussed previously, it cannot suffice to state that the petitioner possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the

United States is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221.

[REDACTED] Department of Biophysics, Panjab University, India, states that he was “a member of [the petitioner’s] Master’s thesis committee” and that she was one of his students. [REDACTED] further states:

[The petitioner’s] graduate research work focused on the effect of gamma radiation on blood cells in the spleen known as splenic lymphocytes. The activity of the different oxidative stress enzymes in these cells were quantified by measuring the concentration of the enzymatic products. . . . [The petitioner] also discovered that the cellular death due to ionizing radiation was possibly triggered by the process of Apoptosis (a genetically programmed cell death). In the course of her dissertation, she became familiar with membrane related events like fluidity and the role of a number of phospholipid and sphingolipid molecules in the process of transducing the death signals to the lymphocytes. [The petitioner] is a remarkable researcher with self-taught expert knowledge of physical and mathematical concepts in Spectroscopy, Membrane Biophysics and Molecular Physiology.

With regard to the petitioner’s scientific knowledge and research experience, objective qualifications and experience necessary for the performance of a research position can be articulated in an application for alien labor certification. Pursuant to *NYSDOT*, 22 I&N Dec. at 221, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training, education, or experience that could be articulated on an application for a labor certification.

[REDACTED] in the Departments of Chemistry and Biochemistry at OSU, states:

I have had the privilege of understanding and guiding [the petitioner’s] research potential in my role as her Ph.D. advisor between 2003 and her graduation in late 2006.

* * *

[The petitioner] used her background in biological sciences in identifying, isolating, and purifying the FHA [Forkhead Associated] domain of yeast in bacterial cells and her knowledge and aptitude in material physics in performing nuclear magnetic resonance (NMR) studies on the protein samples. The solution structure obtained from the NMR experiments was published in 2005 in the *Journal of American Chemical Society* (JACS) as an accelerated communication. [The petitioner’s] publication has provided important knowledge toward identifying the active nodes of the domain so that its binding can be manipulated for achieving beneficial goals including the control of cancerous cells.

* * *

While in my group, [the petitioner] also pursued research on another class of proteins containing motifs known as Ankyrin Repeats. Although present in beneficial proteins such as the tumor suppressing p16, they are also found in cancer causing proteins such as Gankyrin. Once again [the petitioner] not only used her NMR skills to refine the structure of the oncogenic protein, gankyrin, but also used biophysical methods to further study the properties that distinguish them. It was also determined that proteins with diagonally opposite functions can be made to behave in much the same way by making subtle changes to just one or two residues. This once again proves the importance of protein structure-function studies. The research on the protein domain that [the petitioner] pursued provided significant insights into the functional and structural specificity of human tumor-regulating proteins. Her efforts in this project have resulted in several publications in prestigious journals like *Biochemistry* and *Journal of Molecular Biology*.

[redacted] of Internal Medicine, Physiology and Biophysics at OSU, states:

In addition to recruiting [the petitioner] to OSU, I also served on the graduate committees for [the petitioner's] general exam and thesis defense.

* * *

[The petitioner] has worked on several projects but the most significant one involved revealing the structure of a specific forkhead protein domain in complex with a biologically relevant peptide. A large number of sophisticated biophysical techniques were employed to determine this structure, which was an extremely difficult problem to solve. Another project involved determining the 3D structure of Gankyrin. Both of these projects are extremely important in understanding cancer development and in developing logical drug designs for cancer.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

[redacted] Australian National Health and Medical Research Council Senior Research Fellow and Head, Molecular Genetics Unit, St. Vincent's Institute of Medical Research, Australia, states:

I have had the pleasure to work with [the petitioner] when our research groups collaborated in 2004 and early 2005 on a protein structure determination project.

* * *

Although there are several techniques that can be employed to study the molecular structure of proteins, [the petitioner] used a type of Fourier Transform (FT) Nuclear Magnetic Resonance (NMR) spectroscopy called Multi-Dimensional NMR to study FHA. . . . [The petitioner] demonstrated her exceptional and tremendous knowledge in the fields of biochemistry, quantum mechanics, non-linear mathematics, and computer programming by employing NMR to determine the FLIA structure in complex with this peptide. This strong combination of skills is exactly what is needed in the field to advance such important research capable of leading to break-through drug designs for combating cancer.

As previously discussed, it cannot suffice to state that the petitioner possesses useful skills or a unique background. Regardless of the petitioner's particular experience or skills, even assuming they are unique, the benefit her skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *NYSDOT*, 22 I&N Dec. at 221.

Bio-organic Chemistry Division, Ambion, Inc., states:

[The petitioner] determined the binding mode of a ubiquitous protein motif called Forkhead Associated (FHA) domain. This domain is key to the functioning of numerous human enzymes like DNA Ligases, phosphatases and polymerases. . . . [The petitioner] used . . . Nuclear Magnetic Resonance Spectroscopy (NMR) to determine the solution structure of the FHA complex.

The results of her experiments, including the solution structure, were published in the *Journal of the American Chemical Society* The solution structure that she elucidated will eventually lead to structure-based drug designs targeting FHA domain with the aim of suppressing cell cycle kinases and controlling cancer. The solution structure is [the petitioner's] signature, original and extremely high impact contribution to the scientific community's fight against fatal diseases. However, her contributions do not end there – in another project, [the petitioner] showed great competence and perseverance in mutating and thus drastically changing the functionality of an oncogenic protein called gankyrin, into behaving like a tumor suppressor.

The preceding letters of recommendation state that the petitioner has published her work in *Journal of the American Chemical Society*, *Biochemistry*, and *Journal of Molecular Biology*. We note that publication in journals and conference proceedings is inherent to scientific research.¹ For this reason,

¹ For "Biological Scientists," the Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at <http://www.bls.gov/oco/>), states that a "solid record of published research is essential in obtaining a permanent position involving basic research." See <http://data.bls.gov/cgi-bin/print.pl/oco/ocos047.htm>, accessed on December 11, 2009, copy incorporated into the record of proceeding. The handbook also provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See <http://data.bls.gov/cgi-bin/print.pl/oco/ocos066.htm>, accessed on December 11, 2009, copy incorporated into the record of proceeding. The

we will evaluate a citation history or other evidence of the impact of the petitioner's articles when determining their significance to the field. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that other researchers have been influenced by her work and are familiar with it. On the other hand, few or no citations of an article authored by the petitioner may indicate that her work has gone largely unnoticed by her field. The petitioner initially submitted search results from Google Scholar and copies of two articles demonstrating that her body of work had been minimally cited at the time of filing. For example, the documentation initially submitted did not indicate that any of the petitioner's articles were independently cited to more than ten times. While the citation evidence initially submitted indicates a small degree of interest in the petitioner's published work at the time of filing, the limited number of these cites is not sufficient to demonstrate that her work had significantly influenced her field as a whole or otherwise sets her apart from other researchers in her field.

In addition to the letters of support, the petitioner submitted evidence of her membership in the American Chemical Society, her academic honors, and an e-mail reflecting that she received a "Young Scientist Travel Award" to attend a scientific conference. We note that recognition for achievement in one's field and professional association memberships relate to the regulatory criteria for classification as an alien of exceptional ability, a classification that normally requires an approved labor certification. 8 C.F.R. § 204.5(k)(3)(ii). We cannot conclude that meeting one, two, or even the requisite three criteria for classification as an alien of exceptional ability warrants a waiver of the labor certification requirement in the national interest. By statute, "exceptional ability" is not, by itself sufficient cause for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Thus, the *benefit* which the alien presents to his field of endeavor must greatly exceed the "achievements and significant contributions" contemplated for that classification. *Id.*; *see also id.* at 222. Nevertheless, there is no evidence showing that the petitioner's American Chemical Society membership required significant research achievements in her field. Further, with regard to the petitioner's academic honors, we note that university study is not a field of endeavor, but rather training for future employment in a field of endeavor. The petitioner's student honors are not an indication that she has influenced her field and they offer no meaningful comparison between her and others in the field outside of her university who had already completed their graduate studies. Regarding the petitioner's travel award, there is no evidence from the National Institutes of Health showing the criteria for determining a recipient's eligibility for this award. Moreover, we cannot conclude that the petitioner's receipt of funding to cover travel expenses to a scientific conference demonstrates a level of achievement consistent with some degree of influence on the field as a whole.

On November 7, 2008, the director instructed the petitioner to "[s]ubmit evidence of the exact influence your work has had on your specialty or on the field in general." In response, the petitioner

handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reinforces USCIS's position that authorship of scholarly articles does not set the petitioner apart from others in his field; we must consider the research community's reaction to those articles.

submitted additional recommendation letters, citation records, invitations to publish and present her work, information regarding her projects at Agave BioSystems, and material about UIC.

In his second letter, [REDACTED] states:

[The petitioner] successfully completed her post doctoral tenure at our Center in the fall of 2008 and has since moved on to accept a full-time position at Agave Biosystems. During her time here, [the petitioner] successfully worked on the key enzymes involved in the Purine Biosynthesis Pathway of the Anthrax pathogen. She cloned, expressed, purified, and determined the X-Ray structure of one of these enzymes. She also established a fluorescence-based assay to quantify the affinity of these enzymes to their substrates and inhibitors. Her results are being currently used by medicinal researchers at our center to develop therapeutic strategies for Anthrax.

[REDACTED] also discusses “the enormously important bioterrorism research grants” that supported the petitioner’s work at UIC. We generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. The observations from various references about the importance of the petitioner’s anthrax and cancer research establish the intrinsic merit and national scope of her work, but their comments are not adequate to show that her individual accomplishments are of such an unusual significance that she qualifies for a waiver of the job offer requirement. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule.

[REDACTED] Department of Food Science, Cornell University, and Co-founder of Agave BioSystems, the petitioner’s present employer, states:

Agave maintains a scientist workforce of around 10 people. I still serve as the scientific advisor to the firm and was recently entrusted with identifying the best possible young scientist to add to Agave’s staff scientist list. . . . After interviewing several candidates, I ended up recommending [the petitioner] to the position.

* * *

[The petitioner] is well recognized as a promising scientist by the scientific community

* * *

I am happy to report that since coming on board at Agave, [the petitioner] has furthered my conviction that she will become a valuable member of our team with great contributions to

furthering the important research we are involved in. She was hired for her expertise in the field of biomedical research and this is the field she continues to work in.

states:

We recently hired [the petitioner] to become part of our scientist staff. . . . We were impressed by [the petitioner's] demonstrated success in isolating, cloning, and determining the structure of therapeutic protein domains. . . . We also noted her use of NMR spectroscopy for determining protein structure, which demonstrated the inter-disciplinary nature of her research. Inferring the qualities of the protein binding sites from NMR graphs requires an understanding of the nuances of complex biomolecules. In another project that she was involved in, [the petitioner] successfully altered the binding site of a detrimental protein known as Ankyrin Repeats to make it behave in a manner similar to cancer suppressers. This had special significance to Agave as we are working on several projects requiring protein and antibody engineering.

Training in advanced technology or unusual knowledge, while perhaps attractive to the petitioner's U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221. [redacted] letter also provides details about three projects the petitioner is currently working on at Agave BioSystems. These projects and much of the petitioner's work at UIC occurred subsequent to July 25, 2007. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider research work and publications that post-date the filing of this petition in this proceeding.

[redacted] Institute of Structural Biology, France, states:

[The petitioner] has determined the solution structure of FHA domain containing complexes (*JACS*, 2005; *Molecular Cell*, 2008). This was a major accomplishment

* * *

In her published results on Ankyrin repeat domains (*Biochemistry*, 2004), that are known for their highly degenerate primary sequences and as a result present a major challenge for NMR, [the petitioner] and her colleagues combined the use of TROSY-type experiments, perdeuterated protein samples, isotope-filtered NMR experiments, and residual dipolar couplings, to solve a three-dimensional solution structure of the human oncogenic protein Gankyrin. [The petitioner] followed her structural work on these domains with a functional study where she demonstrated the significance of single amino acids in determining the functional role of these ankyrin repeat proteins such as p16 and gankyrin (*Journal of Molecular Biology*, 2008) In addition, she studied by NMR titration the effect of mutations on the overall structure and stability of these proteins.

[redacted] discusses findings in *Molecular Cell* and *Journal of Molecular Biology* that were published by the petitioner subsequent to the petition's filing date. As discussed previously, a

petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider research findings published by the petitioner after July 25, 2007 in this proceeding.

Diabetes and Obesity Research Center, Burnham Institute for Medical Research at Lake Noma, Florida, states:

[The petitioner] refined the solution structure of the ankyrin repeat oncogenic protein Gankyrin, as reported in *Biochemistry*, and then went on to use Gankyrin as a prototype to explore structure-activity relationships of other ankyrin repeat proteins. She developed a strategy for the rational design of mutants to explore the critical structural components of the domain, and has used this most recently to pinpoint key functional motifs in the cyclin-dependent kinase-interacting tumor suppressor protein P16. Since the ankyrin repeat motif is so widely distributed among proteins, this work has important ramifications in a variety of fields.

* * *

For the last 6 years, the major focus of my laboratory has involved the MEF2 class of transcription factors. . . . We are currently exploring roles of these functional interactions in the regulation of MEF2 function in parallel with other approaches to identify genetic programs driven by the various MEF2 isoforms. Though our work is not yet published, [the petitioner's] published work is critical to our dissection of this problem, and we incorporate her findings in our experimental approaches. She has certainly influenced our research and we expect . . . she will continue to greatly impact research in this field in the future.

discusses findings reported by the petitioner and her coauthors that were published in an article entitled "Dissection of Protein-Protein Interaction and CDK4 Inhibition in the Oncogenic versus Tumor Suppressing Functions of Gankyrin and P16." This article was published online on August 22, 2007 and in the *Journal of Molecular Biology* in November 2007. Moreover, states that his article incorporating her findings "is not yet published." The petitioner, however, must demonstrate her eligibility as of the petition's filing date of July 25, 2007. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. In this matter, that means that the petitioner must demonstrate her track record of success with some degree of influence on the field as a whole as of that date. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Katigbak*, 14 I&N Dec. at 49; see also *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Comm'r. 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that we cannot "consider facts that come into being only subsequent to the filing of a petition.") Consistent with these decisions, a petitioner cannot secure a priority date in the hope that her research will subsequently prove influential. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008). Accordingly, articles by the alien that

were not published as of the date of filing and, thus, had not been subject to peer review and disseminated in the field as of that date, cannot establish eligibility for the national interest waiver as of the date of filing. Further, while citations published after the date of filing may serve as evidence of the continued relevance of an alien's work that had already been well cited as of the filing date, they cannot be considered evidence that the alien was already influential as of that date. To hold otherwise would have the untenable result of an alien securing a priority date based on the speculation that her work might prove influential while the petition is pending.

Department of Medical Biophysics, University of Toronto, states:

In my view, [the petitioner] has made two significant and original contributions to our understanding of the structure-function relationship of key protein domains. First, she played a crucial role in the elucidation of the binding specificity of the Forkhead Associated (FHA) Protein Domain and made the important discovery that conventional chemical approaches of selecting ligands miss important biologically relevant ones that rely on subtle hydrophobic interactions. Second, [the petitioner] refined the solution structure of gankyrin, an oncogenic protein containing a motif called Ankyrin repeat and generated a single site-specific mutation in this protein by rational design to generate a behavior corresponding to a tumor suppressor, which is a completely opposite functionality.

, Yale University School of Medicine, states:

I am quite familiar with [the petitioner's] work in [redacted] which is very relevant to our own work on DNA damage checkpoint signal transduction.

* * *

[The petitioner's] Ph.D. dissertation in the Tsai laboratory placed her at the cutting edge of structural analysis of FHA signaling, and parallel work on modular protein interactions mediated by ankyrin repeats.

* * *

Our work on the checkpoint controls in both budding yeast and humans involve proteins such as Chk2 and Rad53 Kinase. Since these proteins have FHA domains, and functions as a result of their interactions with other proteins, our research draws extensively on the results that [the petitioner] published on the FHA domain. [The petitioner's] work on these interactions has influenced our own understanding of the signaling and structural aspects of checkpoint signaling, and has had similar impact on the entire (large) community of scientists with these interests. [The petitioner's] published work takes novel approaches in solving this important protein domain structure and the results published.

* * *

In addition, [the petitioner's] citation record shows that her articles have been widely cited....

In support of [redacted] assertion that articles have been widely cited, the petitioner submitted 2009 search results from Google Scholar and PubMed reflecting that her work has now been cited to approximately four dozen times (including several self-citations by the petitioner and her coauthors).² We cannot ignore, however, that half of the submitted cites to the petitioner's work post-date the filing of this petition. The articles citing to the petitioner's work after July 25, 2007 do not constitute evidence that she was already influential as of that date. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider cites to the petitioner's work from August 2007 and later in this proceeding.

The director denied the petition stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. Noting a lack of evidence that the petitioner's work had been heavily cited, the director found that the petitioner had not established that she has influenced her field overall to greater extent than similarly qualified researchers in her specialty.

On appeal, the petitioner submits additional recommendation letters and copies of scientific articles citing to her work.

[redacted], a member of the Faculty of Medicine at the National Institute of Health and Medical Research, France, states:

In 2005, [the petitioner] had demonstrated a novel interaction between the FHA1 domain of Rad53 and a pTXXI motif of Mdt1 protein in her publication in *Journal of American Chemical Society* under article titled "FHA Domain-Ligand Interactions: Importance of Integrating Chemical and Biological Approaches." This was the first structure of a biologically significant peptide with any FHA domain that had ever been solved. This also presented a novel-binding mode of the FHA1 domain different from those previously determined using synthetic peptides. We relied on [the petitioner's] results to establish the binding of FHA1 to another peptide of biological significance. Our data published in *Molecular and Cellular Biology* in 2007 . . . indicated a similar binding mode for pT(Ptc2) and pT(Rad9), different from that of the peptide from the pT(Mdt1) protein, establishing the fact that such diversified functions of FHA domains can be explained by the existence of multiple binding modes *in vivo*. We also used [the petitioner's] results in comparing the thermodynamic parameters of the molecular interactions between FHA1 and pT(Ptc2) that we obtained using Isothermal Calorimetry.

[redacted] Department of Physics, Johns Hopkins University, states:

² Self-citation is a normal, expected practice among researchers in the scientific community. Self-citation cannot, however, demonstrate the response of independent researchers.

[The petitioner's] contributions are well into the category of "above-average." I also note that my own research group has used [the petitioner's] published results, methods, and inferences starting in 2006, and continue to draw on her discoveries on various ankyrin repeat proteins to complement, interpret, and support our work on the ankyrin repeat protein Notch, and on other repeat proteins we study. [The petitioner's] work on this topic largely culminated in her excellent 2007 paper published on multiple proteins, Gankyrin and P16, both of which are structurally homologous to Notch protein that was cited in one of our papers, "Predicting repeat protein folding kinetics from an experimentally determined folding energy landscape."

The petitioner's "paper published on multiple proteins, Gankyrin and P16" to which [redacted] refers was published online on August 22, 2007 and in the *Journal of Molecular Biology* in November 2007. [redacted] further states that he reviewed the preceding paper for *Journal of Molecular Biology* and that the petitioner also "co-authored an in vivo study that was published recently in *Gene Expression* that proved that reduced expression of P16 is a common event in human pheochromocytomas (neuroendocrine tumor), and is caused by genetic abnormalities in the p16 gene." The petitioner's paper in *Gene Expression* was published in 2008. As discussed previously, an applicant or petitioner must establish that she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. §§ 103.2(b)(1), (12). Therefore, subsequent events cannot cause a previously ineligible alien to become eligible after the filing date. See *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider research findings published by the petitioner after July 25, 2007 in this proceeding.

Counsel argues that the submitted documentation shows that the petitioner "has achieved significant contributions that have markedly influenced her field beginning prior to the I-140 filing and continuing since that date." Counsel points out that the petitioner's work has now been cited more than 40 times. With regard to the articles citing to the petitioner's work that were submitted on appeal, we note that several of them were published subsequent the filing date of this petition. The number of remaining articles shows that the petitioner's work had been independently cited to approximately one dozen times as of the filing date. This minimal number is not sufficient to demonstrate that the petitioner's body of work had a significant degree of influence on her field as of July 25, 2007. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. In this case, at the time of filing, there was not already an established pattern of heavy citation of the petitioner's work. Thus, even if the petitioner had documented a significant later pattern of citation, which we do not concede here, this would not establish that she was eligible for a national interest waiver at the time of filing.

Citations are not the only means by which to show the petitioner's impact on her field. Independent witness letters can play a significant role in this respect. Here, however, the petitioner has submitted only a handful of such letters, which collectively fail to establish the depth or extent of her influence on the field as whole. Simply listing the petitioner's novel findings cannot suffice in this regard, because all graduate students and postdoctoral researchers are arguably expected to produce original work.

With further regard to the letters of support, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from individuals selected by the petitioner is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). In this case, the content of the letters of support submitted by the petitioner does not establish that her work at the time of filing had already had a significant national impact or otherwise influenced her field as a whole.

While petitioner has contributed to biomedical research projects at the universities where she earned her advanced degrees and received her postdoctoral training, she has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. We note that the petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217 n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219 n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole.")

As is clear from a plain reading of the statute, it was not the intent of Congress that every alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given occupation, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.